



Department of Labor Final Rule

Provider Information

Application of the Fair Labor Standards Act to Domestic Service Final Rule – In Kansas – for HCBS Providers

Background

The Fair Labor Standards Act requires:

- Employers to pay employees the minimum wage,
- Workers to work only 40 hours per week, and
- Employers to pay overtime for hours worked above 40.

It used to be that domestic service workers, including personal care attendants, providing companionship and care services to elderly people or to people with illness, injury, or disability, were exempt from following these rules.

What is changing?

In October 2013, the U.S. Department of Labor extended this rule to include those who provide personal care attendant (PCA) services, supportive home care (SHC) services, and personal assistant services (PAS) to aging and disabled people on Medicaid. In most cases, consumers and providers who employ domestic service workers will now have to follow these rules.

Additionally, the U.S. DOL has interpreted the rule to mean that states, MCOs, and FMS providers may be considered the joint employer and responsible for additional employment tasks. However, in Kansas on the self-direction regulation, the consumer is the manager of the employer functions (recruiting, hire, fire, schedules, trains, manages, set rates) of the employee.

What does this mean for providers in Kansas?

As of January 1, 2015, the DOL Final Rule becomes effective. This may force the state of Kansas to place certain limitations on personal care attendant services to make sure that we are following the rules of the U.S. Department of Labor and the Medicaid program. Possible changes could include:

1. Any worker providing personal attendant services (PAS), supportive home care (SHC) and personal care attendants (PCAs) may only work 40 hours per week.
 - o If they work more than 40 hours per week, they must be paid overtime.
 - o The 40 hours may include time for driving between multiple consumers, waiting time, and hours previously included in sleep cycle support
2. Workers may be limited to only working for one Financial Management Services (FMS) provider AND one consumer.
3. Additional services may need to be added to AuthentiCare® or other monitoring system to ensure compliance with the labor laws

4. Sleep cycle support may be changed, significantly limited or eliminated because workers would need to be paid minimum wage for overnight supports, even if sleeping, and the hours would count toward the 40 hours per week.
5. Consumers may need more workers to meet their needs on their plan of care.

These are big changes. How are we going to follow the new expectations?

The Kansas Department for Aging and Disability Services is working on a plan to figure this out. Over the last few weeks, Kansas has been working with state and national organizations to address concerns about the potential unintended consequences. Kansas sent a letter to the US Department of Labor asking for some answers and an exemption for Kansas self-direction programs.

This rule may impact FMS providers and their ability to continue to provide supports to individuals who are self-directing their own care. We need your help to determine how to follow the new rules. You have opportunity to comment on these changes today and in the future. Your perspective on this issue is important.

Where can I find out more?

For more information, go to <http://www.dol.gov/whd/homecare/> and click on **“For Agencies and Other Employers”**

What can I do?

Kansas is trying to change this rule so that consumers can keep their support.

Join in an effort to create a nation-wide effort with other states to achieve our goals.

Here's what you can do to help.

**Please help us by contacting the U.S. Department of Labor at
1-866-487-9243 or online at**

**<http://webapps.dol.gov/contactus/contactus.asp?agency=WHD>
and ask them to:**

- Exempt Kansas' self-directing HCBS consumers from the new rules.
- Delay the Final Rule from going into effect in order to help Kansas effect an orderly transition to meet the requirements of the administrative interpretations of the new rule and the law.

For Public Comments on the possible changes:

The Kansas Department for Aging and Disability Services (KDADS) also wants to help.

1. You can call our offices at 785-296-0787 if you have questions.
2. You can email us at hcbs-ks@kdads.ks.gov

For More Information: Visit the KDADS website at www.KDADS.ks.gov.